Notice of Allowability	Application No. 10/087,033	Applicant(s) BORNSTEIN ET AL.	
	Examiner ALEXANDER BOAKYE	Art Unit 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to *01/09/07*.

2. ☒ The allowed claim(s) is/are *1-14,17,19,18; renumbered as 1-17 respectively.*.

3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some*   c) ☐ None of the:

        1. ☐ Certified copies of the priority documents have been received.

        2. ☐ Certified copies of the priority documents have been received in Application No. _____ .

        3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

    * Certified copies not received: _____ .

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.

    (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached

        1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____ .

    (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of

    Paper No./Mail Date _____ .

    Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)

2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)

3. ☐ Information Disclosure Statements (PTO/SB/08),
    Paper No./Mail Date _____

4. ☐ Examiner's Comment Regarding Requirement for Deposit
    of Biological Material

5. ☐ Notice of Informal Patent Application

6. ☐ Interview Summary (PTO-413),
    Paper No./Mail Date _____ .

7. ☐ Examiner's Amendment/Comment

8. ☒ Examiner's Statement of Reasons for Allowance

9. ☐ Other _____ .

Drawings

1.   The drawings filed on 03/01/2002 have been approved by the examiner.

REASONS FOR ALLOWANCE

2.   The following is an examiner's statement of reasons for allowance: Claims 1-14 and 17-19 are considered allowable since when reading the claims in light of the specification, none of the references of record alone or in combination disclose or suggest the combination of limitations specified in the independent claims. As to claims 1-10, the prior art of record does not teach executing a race by initiating a concurrent download of the file over each of the direct route and the set of one or more alternate routes; and as the result of the race, determining an optimal route between the edge server and the content provider original server. As to claim 11, the prior art of record does not teach determining an optimal route between the edge server and the content provider origin server as a function of the concurrent downloads.

As to claims 12-14, 17, 19, the prior art of record does not teach wherein the performance metric test is a download of a file, and wherein the file is an object being requested by an end user or a test object; determining when a given number of bytes of

the file have been received over a given one of the potential routes and for terminating

the performance metric test with respect to other of the potential routes when the given

number of bytes of the file have been received. As to claim 18, the prior art of record

does not teach wherein the performance metric test is initiated if no such test has

occurred in a given first time period, if a given second time period has elapsed since a

last test, or if a given number of requests for a file have been received at the server

machine without a test being run. Any comments considered necessary by applicant

must be submitted no later than the payment of the issue fee and, to avoid processing

delays, should preferably accompany the issue fee. Such submissions should be

clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

3.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Alexander Boakye whose telephone number is (571)

272-3183. The examiner can normally be reached on M-F from 8:30am to 6:00pm.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Chi Pham, can be reached on (571) 272-3179. The Fax number is (571)

273-8300. Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to Electronic Business Center numbers 866-217-9197

and 703-305-3028.

        Alexander Boakye

Patent Examiner
AB
01/18/07

CHI PHAM
SUPERVISORY PATENT EXAMINER 1/19/07